

OPEN MEETING ITEM



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COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES



**ORIGIN
RECEIVED**

BRIAN C. McNEIL
Executive Secretary

ARIZONA CORPORATION COMMISSION

2004 FEB 13 P 3: 32

DATE: February 13, 2004

DOCKET NO.: T-04201A-03-0552

TO ALL PARTIES:

AZ CORP COMMISSION
DOCUMENT CONTROL

Enclosed please find the recommendation of Administrative Law Judge Philip J. Dion III. The recommendation has been filed in the form of an Opinion and Order on:

**CITYNET ARIZONA
(CC&N/FACILITIES-BASED)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 P.M.** on or before:

FEBRUARY 23, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

MARCH 2 AND 3, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

FEB 13 2004

DOCKETED BY	
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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

DOCKET NO. T-04201A-03-0552

DECISION NO. _____

8 IN THE MATTER OF THE APPLICATION OF
9 CITYNET ARIZONA, FOR A CERTIFICATE OF
10 CONVENIENCE AND NECESSITY TO PROVIDE
11 FACILITIES-BASED AND RESOLD LOCAL
12 EXCHANGE ACCESS, AND FACILITIES-BASED
13 AND RESOLD INTEREXCHANGE
14 TELECOMMUNICATIONS SERVICE IN
15 ARIZONA AND FOR COMPETITIVE
16 CLASSIFICATION OF ITS SERVICES.

OPINION AND ORDER

12 DATE OF HEARING: January 29, 2004

13 PLACE OF HEARING: Phoenix, Arizona

14 ADMINISTRATIVE LAW JUDGE: Philip J. Dion III

15 APPEARANCES: Mike Hallam, LEWIS & ROCA, PLC, on behalf of
Citynet Arizona, L.L.C.

16 Maureen A. Scott, Staff Attorney, Legal Division, on
17 behalf of the Utilities Division of the Arizona
Corporation Commission.

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. On August 7, 2003, Citynet Arizona, L.L.C. ("Citynet" or "Applicant") filed with the
23 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
24 competitive facilities-based and resold local exchange, and facilities-based and resold interexchange
25 telecommunications services statewide.

26 2. On January 5, 2004, Applicant docketed a Notice of Filing of Affidavits of Publication
27 that comply with Commission rules.

28 3. Citynet has authority to transact business in Arizona. Citynet Holdings, LLC is a

1 Delaware corporation. Citynet is a wholly owned subsidiary of Citynet Holdings, L.L.C.

2 4. On December 15, 2003, the Commission's Utilities Division Staff ("Staff") filed its
3 Staff Report, which recommended approval of the application, subject to some recommendations.

4 5. On December 17, 2003, a Procedural Order was issued setting this matter for hearing
5 on January 29, 2004 and setting various procedural deadlines.

6 6. On January 29, 2004, a full public hearing in this matter was held as scheduled.
7 Applicant appeared and was represented by counsel. Staff appeared and was represented by counsel.
8 The hearing was conducted before a duly authorized Administrative Law Judge. Evidence was
9 presented and testimony was taken. At the conclusion of the hearing, the Administrative Law Judge
10 took the matter under advisement and informed the parties that a Recommended Opinion and Order
11 would be prepared for the Commissioners' consideration.

12 7. Applicant has the technical capability to provide the services that are proposed in its
13 application.

14 8. Currently there are several incumbent providers of local exchange and interexchange
15 services in the service territory requested by Applicant, and numerous other entities have been
16 authorized to provide competitive local and interexchange services in all or portions of that territory.

17 9. It is appropriate to classify all of Applicant's authorized services as competitive.

18 10. The Staff Report stated that Applicant has no market power and the reasonableness of
19 its rates would be evaluated in a market with numerous competitors.

20 11. According to Staff, Citynet submitted the unaudited financial statement of its parent,
21 Citynet Holdings, LLC, for the year ending September 1, 2003. These financial statements list total
22 assets of \$16 million, negative equity of \$3.4 million, and a net loss of \$3.4 million.

23 12. The Application states that Citynet collects advances, payments and/or deposits from
24 its customers.

25 13. Staff recommends that Citynet's application for a Certificate to provide competitive
26 facilities-based and resold local exchange and facilities-based and resold interexchange
27 telecommunications services be granted subject to the following conditions:

28 (a) that, unless it provides services solely through the use of its own facilities,

1 Citynet be ordered to procure an Interconnection Agreement, within 365 days
2 of the effective date of the Order in this matter or 30 days prior to the provision
of service, whichever comes first, that must remain in effect until further order
of the Commission, before being allowed to offer local exchange service;

- 3 (b) that Citynet be ordered to file with the Commission, within 365 days of the
4 effective date of the Order in this matter or 30 days prior to the provision of
5 service, whichever comes first, its plan to have its customers' telephone
6 numbers included in the incumbent's Directories and Directory Assistance
7 databases that must remain in effect until further Order of the Commission;
- 8 (c) that Citynet be ordered to pursue permanent number portability arrangements
9 with other LECs pursuant to Commission rules, federal laws and federal rules;
- 10 (d) that Citynet be ordered to abide by and participate in the AUSF mechanism
11 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-
12 00000E-95-0498);
- 13 (e) that Citynet be ordered to abide by the quality of service standards that were
14 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- 15 (f) that Citynet be ordered to certify, through the 911 service provider in the area
16 in which it intends to provide service, that all issues associated with the
17 provision of 911 service have been resolved with the emergency service
18 providers within 365 days of an Order in this matter or 30 days prior to the
19 provision of service, whichever comes first, which certification must remain in
20 effect until further Order of the Commission;
- 21 (g) that Citynet be ordered to abide by all the Commission decisions and policies
22 regarding CLASS services;
- 23 (h) that Citynet be ordered to provide 2-PIC equal access;
- 24 (i) that Citynet be required to notify the Commission immediately upon changes
25 to its name, address or telephone number;
- 26 (j) that Citynet be ordered to comply with all Commission rules, orders, and other
27 requirements relevant to the provision of intrastate telecommunications
28 service;
- (k) that Citynet be ordered to maintain its accounts and records as required by the
Commission;
- (l) that Citynet be ordered to file with the Commission all financial and other
reports that the Commission may require, and in a form and at such times as
the Commission may designate;
- (m) that Citynet be ordered to maintain on file with the Commission all current
tariffs and rates, and any service standards that the Commission may require;
- (n) that Citynet be ordered to cooperate with Commission investigations including,
but not limited to, customer complaints;
- (o) Citynet be ordered to participate in and contribute to a universal service fund,
as required by the Commission; and

- 1 (p) that Citynet be subject to the Commission's rules governing interconnection
2 and unbundling and the 1996 Telecommunications Act and the rules
3 promulgated thereunder. In the event that the Applicant provides essential
4 services or facilities that potential competitors need in order to provide their
5 services, Citynet should be required to offer those facilities or services to these
6 provides on non-discriminatory terms and conditions pursuant to federal laws,
7 federal rules, and state rules.

8
9 15. Staff further recommended that Citynet's application for a CC&N to provide intrastate
10 telecommunications services should be granted subject to the following conditions:

- 11 (a) Citynet shall file conforming tariffs for its CC&Ns to provide resold long
12 distance, facilities-based long distance, resold local exchange and facilities-
13 based local exchange services within 365 days from the date of an Order in this
14 matter or 30 days prior to providing service, whichever comes first, and in
15 accordance with the Decision;
- 16 (b) In order to protect Citynet's customers:
- 17 (1) Citynet should be ordered to procure a performance bond equal to
18 \$235,000. The minimum bond amount of \$235,000 should be increased if
19 at any time it would be insufficient to cover prepayments or deposits
20 collected from Citynet's customers. The bond amount should be increased
21 in increments of \$117,500 whenever the total amount of the advances,
22 deposits and prepayments is within \$23,500 of the bond amount;
- 23 (2) City should docket proof of the performance bond within 365 days of the
24 effective date of an Order in this matter or 30 days prior to the provision of
25 service, whichever comes first, and must remain in effect until further
26 Order of the Commission;
- 27 (3) If at some future date, Citynet does not collect from its resold long distance
28 customers an advance, deposit, and/or prepayment, it may file a request for
cancellation of its performance bond regarding resold interexchange
service. Such request must reference the decision and date of this docket.
- (4) if Citynet desires to discontinue service, it should be required to file an
application with the Commission pursuant to A.A.C. R14-2-1107; and
- (5) Citynet should be required to notify each of its local exchange customers
and the Commission 60 days prior to filing an application to discontinue
service pursuant to A.A.C. R14-2-1107; and any failure to do so should
result in forfeiture of the Applicant's performance bond.
- (c) If any of the above timeframes are not met, then Citynet's CC&N should
become null and void without further Order of the Commission and no
extensions for compliance should be granted.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based and resold local exchange and facilities-based and resold interexchange telecommunications services in Arizona as conditioned by Staff's recommendations.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. Citynet's competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Citynet Arizona, L.L.C. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and resold local exchange, and facilities-based and resold interexchange telecommunications services in Arizona shall be, and is hereby, granted, conditioned upon Citynet Arizona, L.L.C.'s timely compliance with the following three Ordering Paragraphs.

IT IS FURTHER ORDERED that Citynet Arizona, L.L.C. shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that Citynet Arizona, L.L.C. shall procure a performance bond equal to \$235,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the commencement of service. The minimum bond amount of \$235,000 shall be increased if, at any time, it would be insufficient to cover any advances, prepayments and/or deposits collected from the

Applicant's customers. The bond amount shall be increased in increments of \$117,500. This increase shall occur when the total amount of the advances, deposits, and/or prepayments is within \$23,500 of the bond amount.

IT IS FURTHER ORDERED that Citynet Arizona, L.L.C. shall comply with all of the Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

IT IS FURTHER ORDERED that if Citynet Arizona, L.L.C. fails to meet the timeframes outlined in the Ordering Paragraphs above, then the Certificate of Convenience and Necessity conditionally granted herein shall become null and void without further Order of the Commission.

IT IS FURTHER ORDERED that if Citynet Arizona, L.L.C. fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, Citynet Arizona L.L.C.'s performance bond shall be forfeited.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	COMMISSIONER
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COMMISSIONER	COMMISSIONER	
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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2004.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____
PJD:mlj

1 SERVICE LIST FOR:

Citynet Arizona, L.L.C.

2 DOCKET NO.:

T-04201A-03-0552

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